

CENTRAL AREA PUBLIC DEVELOPMENT AUTHORITY
King County, Washington
Special Audit
January 1, 1992 Through December 31, 1992

Schedule Of Findings

1. A Deferred Loan Program Administrator Was Beneficially Interested in Certain Rehabilitation Contracts

Our audit of the deferred loan program at the Central Area Public Development Authority (CAPDA) revealed that contract overpayments of at least \$18,600 to Wimmer Construction were approved by Henry Lewis, construction representative and deferred loan program administrator, during the period January 1, 1992, through December 31, 1992. Accounting records were falsified in an attempt to conceal these transactions.

CAPDA administers a deferred loan program for the City of Seattle. These loans are for the rehabilitation of housing owned and occupied by low-income persons. This is a federal program funded by a U. S. Department of Housing and Urban Development (HUD) Community Development Block Grant. As the program administrator, Mr. Lewis determined the nature and extent of the work to be performed, obtained bids, participated in the selection of contractors, monitored work progress, and submitted payment requests to the City of Seattle.

As evidenced by the following relationships, Henry Lewis was beneficially interested in the rehabilitation contracts between CAPDA and Wimmer Construction.

- a. Wimmer Construction is owned by Teresa Wimmer and employs Michael Coates as a foreman. A July 17, 1992, Master Business Application for the company lists Henry Lewis as a reference.
- b. A June 1, 1992, Master Business Application lists Henry Lewis and Teresa Wimmer as business partners for Inland Bonding Company.
- c. A January 18, 1990, Master Business Application lists Henry Lewis and Michael Coates as business partners in Lewis-Coates Incorporated. This company was dissolved on April 22, 1991.

As a result of these relationships, at least two rehabilitation contracts were inappropriately awarded to Wimmer Construction while Mr. Lewis was the administrator of CAPDA's deferred loan program.

According to City of Seattle staff, CAPDA staff and Homeowners Nos. 92-002 and 92-003, Mr. Lewis accorded preferential treatment to Wimmer Construction, which bid on projects under the name of Mike Coates. While this company was not the lowest bidder on these projects, Mr. Lewis advised the homeowners to award the contract to

Wimmer Construction. The homeowners subsequently agreed and signed contracts with Wimmer Construction.

Based on the guidelines for the deferred loan program, homeowners can, within certain parameters, choose other than the low bidder. However, this option was not exercised by either of these homeowners at their own volition.

Wimmer Construction was not insured, bonded or licensed to conduct business in this state until after these contracts were awarded.

In the course of normal business operations, Mr. Lewis signed and submitted false payment requests to the City of Seattle on behalf of these homeowners. The schedule below summarizes the resulting overpayments which were made to Wimmer Construction.

| <u>Date of Transaction</u> | <u>Percent of Completion</u> | <u>Amount of Billings</u> | <u>Amount of Overpaymts.</u> |
|---------------------------------------------|------------------------------|---------------------------|------------------------------|
| <u>Homeowner No. 92-002:</u> | | | |
| 09/04/92 | 45% | \$ 9,112.50 | |
| 10/01/92 | 90% | 9,000.00 | |
| 11/06/92 | 100% | <u>4,437.50</u> | |
| Total Payments on Project | | 22,550.00 | |
| Current Status | 65% | <u>(13,950.00)</u> | |
| Overpayment on Project for Homeowner 92-002 | | | \$ 8,600.00 |
| <u>Homeowner No. 92-003:</u> | | | |
| 07/23/92 | 50% | <u>\$13,050.00</u> | |
| Total Payments on Project | | 13,050.00 | |
| Current Status | 10% | <u>(3,050.00)</u> | |
| Overpayment on Project for Homeowner 92-003 | | | <u>10,000.00</u> |
| Total Overpayments to Wimmer Construction | | | <u>\$18,600.00</u> |

The actual status of these projects is based upon estimates made by the current CAPDA loan program administrator, in consultation with City of Seattle staff.

As construction representative, Henry Lewis was responsible for the administration of CAPDA's deferred loan program. When we discussed the status of these projects with him, he explained that the problems with these contracts were a result of structural defects of the rehabilitated homes and disagreements between the homeowners and the contractor.

RCW 42.23.030 states in part:

No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein

RCW 42.20.010 states in part:

Misconduct of public officer. Every public officer who shall . . .

(2) Be beneficially interested, directly or indirectly, in any contract, sale, lease, or purchase which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his office, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested therein . . .

Shall be guilty of a gross misdemeanor, and any contract, sale, lease or purchase mentioned in subdivision (2) hereof shall be void . . .

RCW 9A.20.021 states in part:

. . . (2) Gross Misdemeanor. Every person convicted of a gross misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than one year, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine.

RCW 40.16.020 states:

Injury to and misappropriation of record. Every officer who shall mutilate, destroy, conceal, erase, obliterate, or falsify any record or paper appertaining to the officer's office, or who shall fraudulently appropriate to the officer's own use or to the use of another person, or secrete with intent to appropriate to such use, any money, evidence of debt or other property intrusted to the officer by virtue of the officer's office, shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or by both.

Further, federal cost principles state that costs are allowable for federal reimbursement only to the extent of benefits received.

City of Seattle's CAPDA *Loan Program Guidelines* Section VI, Item B, states:

CAPDA shall conduct and certify a competitive bid process to select a contractor to perform the work. The homeowner shall select the lowest responsive bidder. However, the homeowner may select a contractor other than the low bidder, as long as the homeowner's selection is within 10% of the cost estimate prepared by CAPDA and as long as the construction costs are within the maximum loan approved. This contractor must participate in the bid process to be eligible, and his credentials and references must be satisfactory to CAPDA and the City.

The internal control weaknesses which allowed these overpayments to occur and not be detected promptly by management were an inadequate segregation of duties and insufficient program oversight. The construction representative had sole responsibility over practically all the functions relating to the rehabilitation projects of the deferred loan program. There was insufficient program oversight on the part of CAPDA management

and City of Seattle staff.

City of Seattle's CAPDA *Loan Program Guidelines* establishes procedures providing internal controls over the program. The following areas of noncompliance with those procedures also contributed to these conditions.

- a. Before progress or final payments are made, the city must receive a payment request signed by the homeowner and the construction representative. Homeowner 92-002 signed the payment requests on the advice of Henry Lewis, even though the homeowner knew the work had not been completed as stated in the payment request. Homeowner 92-003 signed a blank request. Mr. Lewis advised the homeowner to sign the blank request to prevent a delay in making the progress payment to the contractor while the homeowner was on vacation.
- b. Before progress or final payments are made, the city must receive a copy of the contractor's invoice. Payments to Wimmer Construction were made based on hand-written or typed, unnumbered, no letterhead-note paper invoices, with no itemization as to work performed.
- c. Before final payment is made, the city must receive verification that work under permit has been approved by the city's Department of Construction and Land Use and/or other appropriate city departments. No such verification was present in the files for Homeowner 92-002.

We recommend CAPDA and the City of Seattle seek recovery of the \$18,600 contract overpayments and related audit/investigation costs from Wimmer Construction and its insurance company. We further recommend the Washington State Office of the Attorney General and the King County Prosecuting Attorney review this matter and take whatever action is deemed necessary under the circumstances. Any compromise or settlement of this claim must be approved in writing by the Attorney General and State Auditor as directed by RCW 43.09.260.

Insurance/Bond coverage for Wimmer Construction is as follows:

Contractor's Bonding and Insurance Company
Contractor's Surety Bond
Bond No. 633660
\$6,000
July 14, 1992 to July 14, 1993

Interstate Indemnity Company
Policy number 80-9022591
\$300,000
July 14, 1992 to July 14, 1993

We also recommend CAPDA and the City of Seattle provide more diligent oversight of the entire deferred loan program.